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R# 027718

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ATLANTIC RESEARCH MARKETING SYSTEMS, INC.,

Plaintiff,

v.

AUSTIN PRECISION PRODUCTS, INC. d/b/a LARUE TACTICAL,

Defendant.

Case:2:11-mc-50140
Judge: Edmunds, Nancy G
MJ: Whalen, R. Steven
Filed: 02-01-2011 At 03:48 PM
MISC: ATLANTIC RESEARCH MKTG SYSTEM S INC V. AUSTIN PRECISION PROD INC (N

Civil Action No. 09-cv-10034 (DPW)
Pending in the District of Massachusetts

AUSTIN PRECISION PRODUCTS, INC. D/B/A LARUE TACTICAL'S EMERGENCY MOTION TO COMPEL DEPOSITION AND DOCUMENT PRODUCTION OF L-3 COMMUNICATIONS EOTECH, INC. PURSUANT TO SUBPOENA

Pursuant to Fed. R. Civ. P. 37 and 45, Defendant, Austin Precision Products, Inc. d/b/a LaRue Tactical ("LaRue"), respectfully moves the Court to compel the attendance at deposition and to compel production of responsive documents of third-party L-3 Communications EOTech, Inc. ("EOTech") by February 3, 2011. LaRue properly served a subpoena for testimony and documents on EOTech on October 16, 2010. EOTech did not object, but has failed to produce documents or a witness. Fact discovery is scheduled to close on February 3, 2011, necessitating this emergency motion.

Both Plaintiff, Atlantic Research Marketing Systems Inc. ("A.R.M.S."), and LaRue are in the business of selling firearm accessories, including mounts used to attach optical accessories, such as scopes, lasers, lights, and sights, to firearms. A.R.M.S. filed suit against LaRue in the District of Massachusetts on January 9, 2009. (See A.R.M.S.'s Complaint, Dkt. No. 1.) A.R.M.S.'s complaint, as subsequently amended, includes allegations of patent infringement, trade dress infringement, false designation of origin and false advertising, trademark infringement, unfair competition, defamation, commercial disparagement, and tortuous interference with contractual and/or prospective business relations; and A.R.M.S. alleges that it has suffered damages to its reputation and lost sales and business opportunities as a result of allegedly defaming and/or disparaging statements regarding its business practices and products. (See A.R.M.S.'s Second Amended Complaint, Dkt. No. 120.)

EOTech is in the business of selling optical firearm accessories, and has in the past and/or currently sells A.R.M.S. mount products in conjunction with its optical firearm accessories. LaRue seeks third-party discovery of EOTech for information relevant to the claims and defenses in this litigation. Specifically, LaRue believes that EOTech is in possession of information and documents relating to, *inter alia*, the reputation of A.R.M.S. and A.R.M.S's products and any alleged damage thereto, the quality and durability of A.R.M.S.'s products, purchase and sales of A.R.M.S.'s products and any changes thereto and the reasons therefor, whether there was any decrease in purchase or sale of A.R.M.S. products and if so, the reasons therefor. LaRue served a subpoena, including document requests and topics for deposition, on EOTech on October 16, 2010. A copy is attached as Exhibit A.

EOTech has not objected to LaRue's document requests or deposition topics. Although counsel for EOTech has verbally indicated that EOTech would produce responsive documents and provide a witness for deposition, EOTech has not done so despite LaRue's repeated efforts to schedule a mutually convenient date.

On October 20, 2010, counsel for LaRue spoke with counsel for EOTech by telephone, and counsel for EOTech indicated that EOTech would agree to produce the documents responsive to LaRue's requests. (Declaration of C. Smith, ¶ 4.)

On November 24, 2010, counsel for LaRue contacted counsel for EOTech, informing EOTech that the parties were unable to reach a settlement in this case, and that third-party discovery would proceed. (See Correspondence between counsel for LaRue and EOTech, Exhibit B.)

On December 17, 2010, counsel for LaRue contacted counsel for EOTech again, requesting the production of documents and to schedule a deposition date prior to February 3, 2011, the close of discovery. (See Exhibit B.) On December 20, 2010, counsel for EOTech informed counsel for LaRue by telephone that EOTech was in the process of collecting documents, and would provide an update shortly. (Declaration of C. Smith, ¶ 5.) EOTech did not produce the responsive documents, or provide the stated update.

On January 4, 2011, counsel for LaRue contacted counsel for EOTech again, requesting an update on EOTech's document production and to schedule a deposition date. (See Exhibit B.)

On January 14, counsel for EOTech contacted counsel for LaRue by telephone and left a voicemail indicating that EOTech would produce responsive documents in the next week. (Declaration of C. Smith, ¶ 6.) However, EOTech did not produce documents as stated. Counsel for LaRue attempted to contact counsel for EOTech by phone several times in the following week, but was unable to reach counsel for EOTech. (Id. ¶ 7.)

On January 25, 2011, counsel for LaRue contacted counsel for EOTech again, noting that the discovery in this case would shortly close, and requesting a firm date for the deposition and document production. (See Exhibit B.) Counsel for LaRue has not received a response as of the date of this motion.

Because discovery in this litigation closes on February 3, 2011, (Dkt. Entry of December 17, 2010), LaRue seeks the Court's immediate assistance in obtaining the requested discovery. The discovery of EOTech is relevant to LaRue's defenses against A.R.M.S.'s claims in this litigation, and EOTech has never objected.

Despite reasonable efforts to contact counsel regarding the relief sought, the movant was unable to conduct a conference.

WHEREFORE, LaRue respectfully requests that the Court conduct an expedited hearing or immediately compel EOTech to provide a witness for deposition and to produce responsive documents by February 3, 2011.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: ______________________________

Arthur T. O'Reilly (P70406)
Attorneys for Defendant
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226
(313) 465-7628

Of Counsel:

Thomas P. McNullty (MA BBO 654,564)
Ann Lamport Hammitte (MA BBO 553,263) LANDO & ANASTASI, LLP
Riverfront Office Park
One Main Street, 11th Floor
Cambridge, MA 02142
Telephone: (617) 395-7000
Facsimile: (617) 395-7070
emailservice@LL-A.com

Rosanna Sattler (MA BBO No. 442,760)
James E. Kruzer, (MA BBO No. 670,827)
POSTERNAK BLANKSTEIN & LUND LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-8004
Telephone: (617) 973-6135
Facsimile: (617) 722-4950

Dated: February 1, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Case:2:11-mc-50140
Judge: Edmunds, Nancy G
MJ: Whalen, R. Steven
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MISC: ATLANTIC RESEARCH MKTG SYSTEM S INC V. AUSTIN PRECISION PROD INC (N

ATLANTIC RESEARCH MARKETING SYSTEMS, INC.,

Plaintiff,

v.

AUSTIN PRECISION PRODUCTS, INC. d/b/a LARUE TACTICAL,

Defendant.

Civil Action No. 09-cv-10034 (DPW)
Pending in the District of Massachusetts

BRIEF IN SUPPORT OF AUSTIN PRECISION PRODUCTS, INC. D/B/A LARUE TACTICAL'S EMERGENCY MOTION TO COMPEL DEPOSITION AND DOCUMENT PRODUCTION OF L-3 COMMUNICATIONS EOTECH, INC. PURSUANT TO SUBPOENA

For its brief in support of the instant motion Defendant relies on the statement and authorities contained in the aforementioned motion as well as Fed. R. Civ. P. 37 and 45.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: ____________________
Arthur T. O'Reilly (P70406)
Attorneys for Defendant
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226
(313) 465-7628

Of Counsel:

Thomas P. McNullty (MA BBO 654,564)
Ann Lamport Hammitte (MA BBO 553,263) LANDO & ANASTASI, LLP
Riverfront Office Park
One Main Street, 11th Floor
Cambridge, MA 02142
Telephone: (617) 395-7000
Facsimile: (617) 395-7070
emailservice@LL-A.com

Rosanna Sattler (MA BBO No. 442,760)
James E. Kruzer, (MA BBO No. 670,827)
POSTERNAK BLANKSTEIN & LUND LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-8004
Telephone: (617) 973-6135
Facsimile: (617) 722-4950

Dated: February 1, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record for Plaintiff and counsel for L-3 Communications EOTech, Inc. by electronic mail and first-class mail this 1st of February, 2011.

Paul L. Hayes (BBO # 227,000)
(phayes@mintz.com)
Paul J. Cronin (BBO # 641,230)
(pcronin@mintz.com)
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Telephone: (617) 542-6000
Facsimile: (617) 542-2241

Stephen Wahl
(Stephen.wahl@L-3Com.com)
L-3 Communications EOTech, Inc.
1201 E. Ellsworth,
Ann Arbor,Michigan 48108

Dated: February 1, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Case:2:11-mc-50140
Judge: Edmunds, Nancy G
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ATLANTIC RESEARCH MARKETING SYSTEMS, INC., Plaintiff, v. AUSTIN PRECISION PRODUCTS, INC. d/b/a LARUE TACTICAL, Defendant.	Civil Action No. 09-cv-10034 (DPW) *Pending in the District of Massachusetts*

DECLARATION OF CRAIG R. SMITH IN SUPPORT OF AUSTIN PRECISION PRODUCTS, INC. D/B/A LARUE TACTICAL'S EMERGENCY MOTION TO COMPEL DEPOSITION AND PRODUCTION OF DOCUMENTS OF L-3 COMMUNICATIONS EOTECH, INC.

I, Craig R. Smith, hereby declare the following:

1. I am an attorney at Lando & Anastasi LLP and I represent the defendant, Austin Precision Products, Inc. d/b/a LaRue Tactical ("LaRue") in the above-captioned litigation in the District of Massachusetts.

2. Attached as Exhibit A is a true and correct copy of the notice of deposition, subpoena, document requests, and topics for deposition served on L-3 Communications EOTech, Inc. ("EOTech") on October 16, 2010.

3. Attached as Exhibit B is a true and correct copy of correspondence between myself and Stephen Wahl, counsel for EOTech, regarding EOTech providing a witness for deposition and producing responsive documents in response to LaRue's subpoena.

4. On October 20, 2010, I spoke with Mr. Wahl by telephone. Mr. Wahl indicated to me that EOTech would agree to produce the documents responsive to LaRue's requests.

5. On December 20, 2010, I spoke with Mr. Wahl by telephone. Mr. Wahl indicated to me that EOTech was in the process of collecting documents responsive to LaRue's document requests, and that he would provide an update shortly.

6. On January 14, 2011, I received a voicemail from Mr. Wahl, stating that EOTech would produce the documents responsive to LaRue's document requests in the next week.

7. Between January 14 and January 25, 2011, I placed several phone calls to Mr. Wahl to attempt to schedule a date for EOTech's deposition and document production, but was unable to reach him.

I declare under the penalty of perjury the foregoing is true and correct to the best of my knowledge.

Date: 2/1/11

Craig R Smith by DT

Craig R. Smith

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record for Plaintiff and counsel for L-3 Communications EOTech, Inc. by electronic mail and first-class mail this 1st of February, 2011.

Paul L. Hayes (BBO # 227,000)
(phayes@mintz.com)
Paul J. Cronin (BBO # 641,230)
(pcronin@mintz.com)
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Telephone: (617) 542-6000
Facsimile: (617) 542-2241

Stephen Wahl
(Stephen.wahl@L-3Com.com)
L-3 Communications EOTech, Inc.
1201 E. Ellsworth,
Ann Arbor,Michigan 48108

Dated: February 1, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ATLANTIC RESEARCH MARKETING SYSTEMS, INC., Plaintiff, v. AUSTIN PRECISION PRODUCTS, INC. d/b/a LARUE TACTICAL, Defendant.	Civil Action No. 09-cv-10034 (DPW)

NOTICE OF DEPOSITION AND SUBPOENA OF L-3 COMMUNICATIONS EOTECH, INC.

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 30 and 45 of the Federal Rules of Civil Procedure, Defendant Austin Precision Products, Inc. d/b/a LaRue Tactical will take the deposition of L-3 Communications EOTech, Inc. The deposition will begin on October 20, 2010 at 9:30 a.m. at The Four Points by Sheraton Hotel, 3200 Boardwalk Ann Arbor, Michigan, 48108 on the topics listed on the attached Rider.

The witness shall produce on October 15, 2010 at the offices of Lando & Anastasi, LLP, One Main Street, 11th Floor, Cambridge, Massachusetts 02142 the documents and things set forth in the attached Rider.

The deposition will be recorded by stenographic and video means and will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated October 6, 2010

/s/ Ann Lamport Hammitte
Ann Lamport Hammitte (BBO No. 553263)
Thomas P. McNulty (BBO No. 654564)
LANDO & ANASTASI, LLP
Riverfront Office Park
One Main Street, 11th Floor
Cambridge, MA 02142
Telephone: (617) 395-7000
Facsimile: (617) 395-7070
emailservice@LL-A.com

Rosanna Sattler (BBO No. 442,760)
James E. Kruzer, (BBO No. 670,827)
POSTERNAK BLANKSTEIN & LUND LLP
Prudential Tower
800 Boylston Street
Boston MA 02199-8004
Telephone: (617) 973-6135
Facsimile: (617) 722-4950

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF DEPOSITION AND SUBPOENA OF L-3 Communications EOTech, Inc. was sent via First-Class U.S. Mail to those persons listed below, this 6th day of October, 2010.

Paul L. Hayes (BBO # 227,000)
(phayes@mintz.com)
Paul J. Cronin (BBO # 641,230)
(pcronin@mintz.com)
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Telephone: (617) 542-6000
Facsimile: (617) 542-2241

/s/ Ann Lamport Hammitte
Ann Lamport Hammitte

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1063189.2

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Atlantic Research Marketing Systems, Inc.
Plaintiff
v.
Austin Precision Products, Inc. d/b/a/ LaRue Tactical
Defendant

Civil Action No. 09-cv-10034

(If the action is pending in another district, state where:
District of Massachusetts)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: L-3 Communications EOTech, Inc., 1201 E. Ellsworth, Ann Arbor, Michigan 48108

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Four Points by Sheraton 3200 Boardwalk Ann Arbor, MI 48108	Date and Time: 10/20/2010 9:30 am

The deposition will be recorded by this method: stenographer and video

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See attached Rider

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/06/2010

CLERK OF COURT

____
Signature of Clerk or Deputy Clerk

OR

[signature]
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Austin Precision Products, Inc. d/b/a/ LaRue Tactical, who issues or requests this subpoena, are:
Ann Lamport Hammitte, Lando & Anastasi, Riverfront Office Park, One Main Street Cambridge, MA 02142, ahammitte@LALaw.com, 617-395-7000

Civil Action No. 09-cv-10034

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* ______________________
was received by me on *(date)* __________ .

☐ I served the subpoena by delivering a copy to the named individual as follows: ______________________
______________________ on *(date)* __________ ; or

☐ I returned the subpoena unexecuted because: ______________________
______________________ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
$ __________ .

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: __________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

RIDER OF NOTICE OF DEPOSITION

DEFINITIONS

1. The terms "You" or "Your" shall refer to SureFire, LLC, its employees, co-workers, staff members, agents, representatives, dealers, distributors, and other persons or businesses acting on its behalf.

2. The terms "A.R.M.S." or "Plaintiff" shall refer to the Plaintiff, Atlantic Research Marketing Systems, Inc., in this Action, and includes any entities constituting parents, predecessors, subsidiaries, affiliates, divisions, associated organizations, joint ventures, as well as present and former officers, directors, trustees, employees, staff members, agents, or other representatives, including counsel and patent agents, in any country.

3. The term "Action" means the action styled *Atlantic Research Marketing Systems, Inc. v. Austin Precision Products, d/b/a LaRue Tactical*, now pending in the United States District Court for the District of Massachusetts as Civil Action No. 09-cv-10034 (DPW).

4. The term "Asserted Patent" or "'871 patent" shall mean U.S. Patent No. 4,845,871 and all related U.S. patents, including, but not limited to, all patents, patent applications, and patent publications whether issued, abandoned or pending, claiming priority to U.S. application Serial No. 07/183,082.

5. The term "A.R.M.S.' Trademark Registrations" shall mean U.S. Trademark Registration No. 3,466,163 (the '163 Registration) for the trade dress described therein as: "the mark consists of the configuration of an actuator platform of a gun accessory mount in the form of a substantially semi-circular boss containing a circular hole in its center and extending from one side of the mount"; U.S. Trademark Registration No. 3,385,512 (the '512 Registration) for the trademark described therein as: "#17"; and U.S. Trademark Registration No. 3,478,909 (the '909 Registration) for the trade dress described therein as: "the mark consists of the configuration of the base portion of a gun accessory mount in the form of a rectangular base portion having substantially semi-circular actuator platform extending from one side thereof."

6. The Uniform Definitions set forth in the Local Rules of the United States District Court of Massachusetts, L.R. 26.5, shall apply.

5. Documents attached to each other shall not be separated.

6. If any information requested is claimed to be privileged or otherwise, please provide all information falling within the scope of the Document Request which is not privileged, and for each item of information contain in a document to which a claim of privilege is made, identify such document with sufficient particularity for purposes of a motion to compel, such identification to include at least the following:

(a) the basis on which the privilege is claimed;

(b) the named and positions of the author of the document and all other persons participating in the preparation of the document;

(c) the name and position of each individual or other person to whom the document, or a copy thereof, was sent or otherwise disclosed;

(d) the date of the document;

(e) a description of any accompanying material transmitted with or attached to such document;

(f) the number of pages in such document;

(g) the particular interrogatory to which such document is responsive; and

(h) whether any business or non-legal matter is contained or discussed in such document.

7. If Your response to a particular Document Request is a statement that You lack the ability to comply with that Document Request, You must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in Your possession, custody, or control, in which case the name and address of any person or entity known or believed by you to have possession, custody, or control of that information or category of information must be identified.

8. Your obligation to respond to these Document Requests is continuing and its responses are to be supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

DOCUMENTS AND THINGS TO BE PRODUCED

1. All documents and things concerning A.R.M.S.' firearms accessory mounts.

2. All documents and things concerning the process of manufacturing A.R.M.S.' firearms accessory mounts.

3. All documents and things concerning the durability, quality, performance and/or use of A.R.M.S.' products.

4. All documents and things concerning quality control of A.R.M.S.' products.

5. All documents and things concerning the quantity of A.R.M.S.' firearms accessory mounts sold by You, whether sold alone or in combination with any other product.

6. All advertisements, brochures, pamphlets, or other marketing materials showing products or kits that include A.R.M.S.'s products.

7. All invoices to and/or from A.R.M.S. for firearms accessory mounts from 1987 to present.

8. All documents and things concerning the market for A.R.M.S.' firearms accessory mounts sold or offered for sale by You.

9. All documents and things concerning A.R.M.S.' reputation.

10. All documents and things concerning Richard Swan's reputation.

11. Any communication with A.R.M.S., including but not limited to its employees, its counsel and its officers and/or directors, including Richard Swan, Brian Fraser-Swan, and Sharon Swan concerning firearms accessory mounts.

12. All contracts and/or agreements for firearms accessory mounts sold alone or in combination with any other product, parts, and/or services with A.R.M.S.

13. All documents and things concerning any revenues generated by You from or related to the sales of A.R.M.S.' firearms accessory mounts.

14. All documents and things concerning any profits generated by You from or related to the sales of A.R.M.S.' firearms accessory mounts.

15. All documents and things concerning any complaints, returns, exchanges or repairs of A.R.M.S.' products.

16. All documents and things concerning Your relationship with A.R.M.S.

17. All written communications relating to this Action and/or the Asserted Patent and/or A.R.M.S. Trademark Registrations between the You and any third party.

18. All documents and things concerning any reasons why your revenues and/or profits generated by You from or related to the sales of A.R.M.S.' products declined over any quarterly period from 1987 to present, including but not limited to those reflecting the dates on which You decided to manufacture mounts and the dates such manufacturing began.

19. Any contract or agreement with the U.S. Military for the sales of any of A.R.M.S.'s products, and/or any of Your products which include A.R.M.S.'s products.

20. Any contract or agreement with any law enforcement agencies for the sales of any of A.R.M.S.'s products, and/or any of Your products which include A.R.M.S.'s products.

21. All documents and things concerning postings on AR15.com by LaRue Tactical.

22. All documents and things concerning any alleged damage to A.R.M.S.' reputation, including but not limited to any alleged damage due to postings on AR15.com by LaRue Tactical and others.

23. All documents and things concerning any alleged lost sales of A.R.M.S.' products, including but not limited to any alleged lost sales due to postings on AR15.com by LaRue Tactical and others.

24. All documents and things concerning any alleged secondary meaning associated with any trademark or trade dress asserted by A.R.M.S, including, but not limited to A.R.M.S.' Trademark Registrations.

25. All documents and things concerning any alleged likelihood of confusion, mistake, or deception by consumers as to the affiliation, connection, or association of any LaRue Tactical products or as to the origin, sponsorship, or approval by A.RM.S. of any LaRue Tactical's products.

26. All documents, communications and correspondence provided to You by Plaintiff or Plaintiff's counsel in connection with this Action.

27. All documents, communications and correspondence which You have provided to Plaintiff or Plaintiff's counsel in connection with this Action.

28. All documents and things which You have reviewed or intend to review in advance of any testimony which you may be asked to give in this Action.

29. Any and all written drafts, versions, summaries, notes, discussions of or iterations of any planned or intended testimony by You in this Action.

30. All documents and/or agreements for compensation between You and Plaintiff or Plaintiff's counsel.

31. All retention letters or agreements concerning this Action.

DEPOSITION TOPICS

1. Small arms weapons and accessories for same (including firearms accessory mounts, optics, and rails).

2. The sales of small arms weapons and accessories.

3. The market for small arms weapons and accessories.

4. The durability, performance and/or use of A.R.M.S.' products.

5. The process of manufacturing A.R.M.S.' products.

6. Any quality control measures for A.R.M.S.' products.

7. The sales of A.R.M.S.' firearms accessory mounts, sold alone or in combination with any other, and parts thereof.

8. The market for A.R.M.S.' products.

9. A.R.M.S.' reputation.

10. LaRue Tactical and LaRue Tactical's products.

11. The AR15.com website and similar firearms-related websites, including but not limited to:
   a. thehighroad.org
   b. northeastshooters.com
   c. snipershide.com
   d. LightFighter.net
   e. 10-8forums.com
   f. m4carbine.net
   g. thefirearmblog.com

12. Any alleged damage to A.R.M.S.' reputation, including but not limited to any alleged damage due to postings on AR15.com by LaRue Tactical and others.

13. Any alleged lost sales of A.R.M.S.' products, including but not limited any alleged lost sales due to postings on AR15.com by LaRue Tactical and others.

14. Any alleged secondary meaning associated with any trademark or trade dress asserted by A.R.M.S.

15. Any alleged likelihood of confusion, mistake, or deception by consumers as to the affiliation, connection, or association of any LaRue Tactical products or as to the origin, sponsorship, or approval by A.RM.S. of any LaRue Tactical's products.

16. Any contracts and/or agreements for firearms accessory mounts sold alone or in combination with any other product, parts, and/or services with A.R.M.S.

17. Your knowledge regarding any complaints, returns, exchanges, and/or repairs of A.R.M.S.' products.

18. Your relationship with A.R.M.S.

19. Any communications relating to this Action and/or the Asserted Patent and/or A.R.M.S. Trademark Registrations between the You and any third party.

20. Any reasons why your revenues and/or profits generated by You from or related to the sales of A.R.M.S.' products declined over any quarterly period from 1987 to present.

21. Any contract or agreement with the U.S. Military for the sales of any of A.R.M.S.' products, and/or any of Your products which include A.R.M.S.'s products.

22. Firearms accessory mounts manufactured by or for You.

23. Any information provided to You by Plaintiff or Plaintiff's counsel in connection with this Action.

24. Any information which You have provided to Plaintiff or Plaintiff's counsel in connection with this Action.

25. Any agreements for compensation between You and Plaintiff or Plaintiff's counsel.

26. Any retention letters or agreements concerning this Action.

Danni Tang

From: Craig R. Smith
Sent: Tuesday, January 25, 2011 5:46 PM
To: Stephen Wahl
Subject: Re: Subpoena

Hi Steve:

I have tried to reach you several times to discuss the subpoena. Yesterday, I left another message for you concerning getting a firm date for documents and a deposition. As you know, the discovery deadline in my case is next week. I would rather not move to compel production, but I will not have a choice if I do not receive a response soon. Please let me know if we can work out the details tomorrow.

Thanks,
Craig

On Jan 4, 2011, at 2:59 PM, Craig R. Smith wrote:

Hi Steve:

I hope you had a nice holiday. Let me know when you have time to discuss the document production and deposition.

Thanks,
Craig

From: Craig R. Smith
Sent: Friday, December 17, 2010 6:02 PM
To: 'Stephen.Wahl@L-3Com.com'
Subject: RE: Subpoena

Thanks Steve. I'll call you Monday afternoon around 3pm.

Have a nice weekend.

Craig

From: Stephen.Wahl@L-3Com.com [mailto:Stephen.Wahl@L-3Com.com]
Sent: Friday, December 17, 2010 5:43 PM
To: Craig R. Smith
Subject: RE: Subpoena

Sender **ALLOWED** [Remove] [Block]
[illegible] Anti Spam Control Panel

Hi Craig:

Will be here Mon thru Wed. Lets talk in the PM Mon.

Regards,
Steve

From: Craig R. Smith [mailto:CSmith@LALaw.com]
Sent: Friday, December 17, 2010 4:13 PM
To: Wahl, Stephen F @ SSG - Link
Subject: RE: Subpoena

Hi Steve:

The Court extended the discovery deadline until Feb. 3, 2011. We will need to collect the EO Tech documents and take a deposition prior to Feb. 3.

Please let me know if you are available next week to discuss the documents and deposition. I am available all week, except for Dec. 24.

Thanks,
Craig

From: Craig R. Smith
Sent: Wednesday, November 24, 2010 1:30 PM
To: 'Stephen.Wahl@L-3Com.com'
Subject: RE: Subpoena

Hi Steve:

The parties have not been able to resolve the litigation. As a result, we will need to proceed with third-party discovery. Please let me know when you are available to discuss the production of documents and scheduling a deposition, if necessary.

Thanks,
Craig

From: Stephen.Wahl@L-3Com.com [mailto:Stephen.Wahl@L-3Com.com]
Sent: Wednesday, October 20, 2010 10:14 AM
To: Craig R. Smith
Subject: RE: Subpoena

Sender **ALLOWED** [Remove] [Block]

Thanks. Call 817 619 3212

From: Craig R. Smith [mailto:CSmith@LALaw.com]
Sent: Wednesday, October 20, 2010 9:13 AM
To: Wahl, Stephen F @ Link
Subject: RE: Subpoena

Thanks Steve. I will call you in about 15 minutes.

Craig

From: Stephen.Wahl@L-3Com.com [mailto:Stephen.Wahl@L-3Com.com]
Sent: Tuesday, October 19, 2010 6:14 PM
To: Craig R. Smith
Subject: RE: Subpoena

Sender **ALLOWED** [Remove] [Block]

Dear Craig,
10:30 is good for me.
Regards,
Steve

From: Craig R. Smith [mailto:CSmith@LALaw.com]
Sent: Tuesday, October 19, 2010 4:28 PM
To: Wahl, Stephen F @ Link
Subject: FW: Subpoena

Dear Steve:

Ann forwarded your email and voicemail to me. Please let me know if you are available tomorrow to discuss the subpoena. I am available from 10:30am till noon ET.

Thanks,
Craig

Craig R. Smith
Lando & Anastasi
One Main Street
Cambridge, MA 02142
Direct: 617-395-7081
Main: 617-395-7000
Fax: 617-395-7070
Email: csmith@LALaw.com
www.LALaw.com

*Confidentiality Note: This e-mail message and any attachments may contain confidential or privileged information. If you are not the intended recipient, please notify me immediately by replying to this message. Please destroy all copies of this message and any attachments.
Thank you.*

From: Ann Lamport Hammitte
Sent: Tuesday, October 19, 2010 2:59 PM
To: Craig R. Smith
Subject: FW: Subpoena

I'll forward you the voice mail.

From: Stephen.Wahl@L-3Com.com [mailto:Stephen.Wahl@L-3Com.com]
Sent: Tuesday, October 19, 2010 2:25 PM
To: Ann Lamport Hammitte
Subject: Subpoena

Sender **CONFIRMED** [Remove] [Block] [Allow Domain]

Dear Ms. Hammitte,
I have tried to reach you regarding your subpoena in the Atlantic Research v Austin Precision matter.
Please call at your first opportunity.
Regards,
Steve Wahl
817 619 3212 office
817 614 1941 cell